

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARIAN MANUEL POWELL,
Plaintiff,
v.
SARADETH, et al.,
Defendants.

No. 2:23-cv-00946-DAD-EFB (PC)

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel and in forma pauperis in this action brought under 42 U.S.C. § 1983. ECF No. 1, 8. On May 24, 2024, the court dismissed plaintiff's first amended complaint with leave to amend. ECF No. 16. Plaintiff has filed a second amended complaint. ECF No. 17.

I. Screening Requirement

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." *Id.* § 1915A(b).

////

1 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)
2 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and
3 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
4 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
5 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).
6 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
7 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
8 U.S. 662, 679 (2009).

9 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
10 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
11 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
12 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
13 678.

14 Furthermore, a claim upon which the court can grant relief must have facial plausibility.
15 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual
16 content that allows the court to draw the reasonable inference that the defendant is liable for the
17 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a
18 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*
19 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the
20 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

21 II. Screening

22 Plaintiff’s allegations concern his experiences while incarcerated at California Health
23 Care Facility in Stockton (“CHCF”). The complaint contains allegations concerning what appear
24 to be five separate incidents, perhaps linked through plaintiff’s allegation of a continuing pattern
25 of harassment against him by CHCF staff. *See* ECF No. 17 at 4.

26 Incident One. Plaintiff alleges that, on September 14, 2022, he “boarded up” his cell to
27 force a sergeant to come and talk to him about various issues. *Id.* at 1. The sergeant (not named
28 as a defendant in this case) came and asked plaintiff to sit on his bunk so he could enter the cell

1 and discuss plaintiff's issues. *Id.* Plaintiff complied. *Id.* The sergeant left, and defendant
2 officers Truong, Fajardo, and Terrazas entered. *Id.* Truong directed plaintiff to stand against the
3 wall, and plaintiff complied. *Id.* While Fajardo was "moving papers," Truong yelled, "Stop
4 spitting." *Id.* Truong and Terrazas grabbed plaintiff, put him on his knees, pushed his head
5 down, repeatedly hit him in the head, face, and back, and kicked and kneed him in his ribs. *Id.*
6 After the assault, Terrazas and Fajardo escorted plaintiff to the nurses' station, where "the
7 lieutenants and sergeants" taunted plaintiff. *Id.* at 2. "They" took plaintiff's shower shoes and
8 left him to walk sock-footed on the "painful floor." *Id.* "They" never returned any of the paper
9 or property plaintiff had in his cell. *Id.*

10 To state a claim of excessive force in violation of the Eighth Amendment, a plaintiff must
11 allege facts that show that a correctional officer used force against him maliciously and
12 sadistically to cause harm, rather than in a good-faith effort to maintain or restore discipline.
13 *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992). To determine whether the evidence establishes
14 such a scenario, the factfinder may consider: (1) the need for force; (2) the relationship between
15 that need and the amount of force used; (3) the threat reasonably perceived by the officer; (4) the
16 extent of injury suffered by the plaintiff; and (5) any efforts made to temper the severity of the
17 forceful response. *Id.* at 7.

18 Construed liberally, and for the limited purpose of screening under § 1915A, plaintiff has
19 stated potentially cognizable Eighth Amendment claims against defendants Truong, Fajardo, and
20 Terrazas for subjecting him to excessive force. Plaintiff has not stated cognizable claims through
21 his allegations concerning taunting, shoes, and property, because he has not identified a defendant
22 who committed these alleged wrongs.

23 Incident Two. Plaintiff alleges that, on September 15, 2022, defendant officers Doe No. 2
24 and Doe No. 3 gave him an orange. *Id.* When plaintiff bit into the orange, he heard a loud crack
25 and felt extreme jaw pain. *Id.* Plaintiff could not properly open his mouth for several days. *Id.* at
26 2-3. When he looked inside, he saw that CHCF had "illegally" done surgery on his tooth. *Id.*

27 ///

28 ///

1 Plaintiff's allegations regarding this incident are too vague to state a viable claim.
2 Plaintiff does not provide facts from which a reasonable factfinder could conclude that defendants
3 Doe Nos. 2 and 3 caused plaintiff's jaw pain, tooth injury, or surgery.

4 Incident Three. Plaintiff alleges that, while he was housed in CHCF max custody "for
5 assaulting an officer on September 14th 2022," defendant officer Doe No. 1 dispersed pepper
6 spray into his cell vents until plaintiff could not breathe. *Id.* at 3. Defendant officer Doe No. 4
7 came to plaintiff's cell door and "threatened my life by making a gun with his hand and pointing
8 it at me and telling me he was going to kill me when I get out." *Id.*

9 These allegations are insufficient to state a viable Eighth Amendment claim. Plaintiff
10 does not provide sufficient facts from which it may be inferred that Doe No. 1 dispersed the
11 pepper spray into his cell maliciously and sadistically to cause harm, rather than in a good-faith
12 effort to maintain or restore discipline. Plaintiff's allegations against Doe No. 4 fail because mere
13 threats do not give rise to cognizable Eighth Amendment claims. *Gaut v. Sunn*, 810 F.2d 923,
14 925 (9th Cir. 1987) (per curiam) (it "trivializes the Eighth Amendment to believe a threat
15 constitutes a constitutional wrong.")).

16 Incident Four. Plaintiff alleges that, on January 30, 2023, plaintiff boarded up his cell
17 again "because I still had no shoes and staff had been wronging me constantly." *Id.* Plaintiff was
18 taken to the nurses' station where defendant officers Saradeth and Cervantes assaulted plaintiff.
19 *Id.* Cervantes punched plaintiff six times in his solar plexus while moaning noisily, saying "Oh I
20 think I like this one." *Id.* Saradeth moaned and twisted plaintiff's nipples, saying "You like
21 that," "Oh he likes it," and "You like to rape little kids." *Id.* at 3-4.

22 Existing case law distinguishes Eighth Amendment claims arising from sexual
23 assault and makes a few points very clear. First, sexual assault serves no valid
24 penological purpose. Second, where an inmate can prove that a prison guard
25 committed a sexual assault, we presume the guard acted maliciously and
26 sadistically for the very purpose of causing harm, and the subjective component
27 of the Eighth Amendment claim is satisfied. Finally, our cases have clearly held
28 that an inmate need not prove that an injury resulted from sexual assault in order
to maintain an excessive force claim under the Eighth Amendment. Any sexual
assault is objectively repugnant to the conscience of mankind and therefore not de
minimis for Eighth Amendment purposes.

////

1 *Bearchild v. Cobban*, 947 F.3d 1130, 1144 (9th Cir. 2020). Construed liberally, and for the
2 limited purpose of screening under § 1915A, plaintiff has stated potentially cognizable Eighth
3 Amendment claims against defendants Saradeth and Cervantes.

4 Incident Five. Plaintiff alleges that, at some unspecified time, defendant officer Moua
5 “refused me meals for three days straight.” *Id.* at 4.

6 The Eighth Amendment protects prisoners from inhumane methods of punishment and
7 from inhumane conditions of confinement. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir.
8 2006). Extreme deprivations are required to make out a conditions-of-confinement claim, and
9 only those deprivations denying the minimal civilized measure of life’s necessities are
10 sufficiently grave to form the basis of an Eighth Amendment violation. *Hudson v. McMillian*,
11 503 U.S. 1, 9 (1992). “Prison officials have a duty to ensure that prisoners are provided adequate
12 shelter, food, clothing, sanitation, medical care, and personal safety.” *Johnson v. Lewis*, 217 F.3d
13 726, 731-32 (9th Cir. 2000) (quotations and citations omitted).

14 “The circumstances, nature, and duration of a deprivation of these necessities must be
15 considered in determining whether a constitutional violation has occurred. The more basic the
16 need, the shorter the time it can be withheld.” *Johnson*, 217 F.3d at 731 (internal quotation marks
17 and citations omitted). Liberally construed, and for the limited purpose of screening under §
18 1915A, plaintiff has stated a potentially cognizable Eighth Amendment claim against defendant
19 Moua.

20 No Leave to Amend. Because plaintiff has had multiple opportunities to amend the
21 complaint, the court recommends that the case proceed on plaintiff’s potentially cognizable
22 claims against Saradeth, Moua, Truong, Fajardo, and Terrazas, and that plaintiff’s non-cognizable
23 claims against Doe Nos. 1-4 be dismissed without further leave to amend. *Williams v. California*,
24 764 F.3d 1002, 1018-19 (9th Cir. 2014) (affirming district court’s finding that the “fact that
25 Plaintiffs have already had two chances to articulate clear and lucid theories underlying their
26 claims, and they failed to do so, demonstrates that amendment would be futile”).

27 ///

28 ///

III. Recommendation

Accordingly, it is hereby ORDERED that:

1. The second amended complaint (ECF No. 17) states the following potentially cognizable claims:
 - a. Against Terrazas, Fajardo, and Truong for violation of the Eighth Amendment on or about September 14, 2022;
 - b. Against Saradeth and Cervantes for violation of the Eighth Amendment on or about January 30, 2023; and
 - c. Against Moua for violation of the Eighth Amendment by denying plaintiff meals for three consecutive days.
2. The second amended complaint fails to state potentially cognizable claims against defendants Doe Nos. 1-4.

It is further RECOMMENDED that the court dismiss plaintiff's claims against Does No. 1-4 without leave to amend and that the case proceed solely on the potentially cognizable claims identified above.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any response to the objections shall be served and filed within fourteen days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

Dated: September 18, 2025


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE